Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

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C O N F I D E N T I A L STATE 160674

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FOL RPT USUN NEW YORK 2176 SENT ACTION SECSTATE DATED 08 JUL 77

QUOTE: C O N F I D E N T I A L USUN 2176

FROM US DEL LOS

DEPT PASS ALL DIPLOMATIC POSTS

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE CLASSIFIED SUPPLEMENT TO WEEKLY REPORT
WEEK OF JUNE 27 TO JULY 1, 1977

1. SUMMARY: GENERAL COMMITTEE AND PLENARY. THE ISSUE OF THE DEGREE TO WHICH PRESIDENT AMERASINGHE HAD DISCRETION REGARDING THE NEW COMPOSITE TEXT WAS DEEPLY DIVISIVE. THE LATINS IN EFFECT SUPPORTED A VETO FOR THE RELEVANT COMMITTEE CHAIRMEN, ALTHOUGH THE SOVIETS DOWNPLAYED THE ISSUE. THE LAND-LOCKED/GDS SUPPORTED DISCRETION FOR AMERASINGHE. THUS IN EFFECT, THE CRUX OF THE PROBLEM RELATED TO THE ROLE OF
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COMMITTEE 2 CHAIRMAN AGUILAR OF VENEZUELA. IT WOULD APPEAR FROM HIS STATEMENTS, THAT AMERASINGHE WOULD NOT MAKE CHANGES IN THE TEXT OVER THE OBJECTIONS OF THE RELEVANT COMMITTEE CHAIRMEN. THE PROCEDURE MAKES IT ALL THE MORE DIFFICULT FOR US TO ACHIEVE CHANGES IN THE TEXT ON THE STATUS OF THE ECONOMIC ZONE OR SCIENTIFIC RESEARCH IN THE ABSENSE OF MORE PRIVATELY NEGOTIATED ARRANGEMENT AMONG STATES WITH DIFFERENT

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POINTS OF VIEW. A NEW CONSOLIDATED TEXT WILL BE MORE DIFFICULT TO CHANGE LATER, AND WOULD ON THESE ISSUES HAVE AN INFLUENCE ON STATE PRATICE AND THE DEVELOPMENT OF CUSTOMARY LAW PRIOR TO OR IN THE ABSENSE OF A TREATY. THE PAST WEEK HAS ACCORDINGLY WITNESSED THE COMMENCEMENT OF INTENSIFIED PRIVATE DISCUSSION ON THESE AND RELATED DISPUTE SETTLEMENT ISSUES STIMULATED BY MEXICO AND NORWAY AT VARIOUS DINNER AND OTHER MEETINGS. MEANWHILE, MOST OF THE CONFERENCE, UNAWARE OF THESE AND OTHER EFFORTS, SEEMS TO BE MARKING TIME AWAITING THE CONSOLIDATED TEXT. END SUMMARY.

2. COMMITTEE 1

CHAIRMAN ENGO'S INTENTIONS WITH REGARD TO THE INFORMAL COMPOSITE NEGOTIATING TEXT (INCT) REMAIN UNCLEAR. HE IS BEING HEAVILY LOBBIED TO MAKE CHANGES TO THE EVENSEN FORMULATIONS. HE MAY WELL ACCOMMODATE G-77 PRESSURES TO AMEND THE TEXT TO PROVIDE, TO SOME DEGREE, MANDATORY TRANSFER OF TECHNOLOGY BY STATE AND PROVATE MINERS TO THE ENTERPRISE. HE IS ALSO RUMORED TO FAVOR A 50-50 SPLIT BETWEEN LAND AND SEA-BASED PRODUCTION, HAVING BEEN PERSUADED (PERHAPS BY CANADA) THAT THE AFRICAN CONTINENT WILL BE THE LOCATION OF A MAJOR NEW LAND-BASED PRODUCTION. ENGO CONTINUES TO BE ADVISED BY A SMALL GROUP OF G-77 MEMBERS OF GENERALLY MODERATE CAST. THE IDENTITY OF ALL MEMBERS OF THE GROUP IS NOT KNOWN BUTIT INCLUDES KOH (SINGAPORE) AND RATTRAY (JAMAICA).

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B. THE DISCUSSION OF COMPLUSORY DISPUTES SETTLEMENT BY THE COMMITTEE I NEGOTIATING GROUP WAS SUBSTANTIAL AND CONCRETE AND REVEALED CONSIDERABLE AGREEMENT ON STRUCTURAL QUESTIONS. MUCH LESS AGREEMENT EXISTS ON THE CORE QUESTION OF SCOPE OF JUDICIAL REVIEW OF DECISIONS AND ACTIONS OF THE AUTHORITY.

C. COMMITTEE I WILL ATTEMPT TO COMPLETE ITS WORK ON DISPUTES SETTLEMENT AND FINANCIAL ARRANGEMENTS DURING THE WEEK OF JULY 5-8. THE ONLY CURRENT BASIS FOR DISCUSSION OF FINANCIAL ARRANGEMENTS IS A VERY UNSATISFACTORY TEXT PREPARED BY BAILEY OF AUSTRALIA, THE RAPPORTEUR. THIS DRAFT MAY INHIBIT EFFECTIVE-CONSIDERATION OF THE COMPLEX SUBJECT DURING THE SHORT TIME AVAILABLE. WE CONTINUE TO WORK WITH BAILEY IN HOPES OF GETTING A MUCH MORE UNSATISFACTORY TEXT.

D. MEETINGS OF THE G-77 DURING THE PAST WEEK DID NOT PRODUCE A UNIFIED G-77 POSITION ON THE EVENSEN TEXT. THE G-77 DID, HOWEVER, RELAY TO AMERASINGHE A MEMORANDUM OUTLINING THE TYPE OF SYSTEM OF EXPLOITATION WHICH THEY WHISHED TO HAVE.

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E. WE CANNOT PREDICT WITH ANY CONFIDENCE THE LIKELY DEGREE OF ACCEPTABILITY OF THE EVENTUAL COMMITTEE I PORTION OF THE ICNY. ENGO'S ACTIONS CANNOT BE PREDICTED. THE ISSUE OF A LAND-SEA SPLIT WITHIN THEPRODUCTION LIMITATION REMAINS OPEN. AGREEMENT ON SATISFACTORY FINANCIAL ARRANGEMENTS REMAINS HIGHLY UNCERTAIN.

3. COMMITTEE II

A. THE US MET WITH THE PHILIPPINES PRIVATELY TO DISCUSS ARCHIPELAGOES. THE PHILIPPINES ASKED WHETHER THE US HAD CHANGED ITS POSITION ON NAVIGATION THROUGH AND OVER ARCHIPELAGIC WATERS, TO WHICH THE US RESPONDED THAT ITS POSITION REMAINED THE SAME. THE PHILIPPINES CONTINUES TO TAKE AN EXTREME POSITION WHICH HAS LITTLE, IF ANY, SUPPORT AT THE CONFIDENTIAL

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CONFERENCE. WE MET AGAIN WITH THE INDONESIANS TO DISCUSS ARCHIPELAGOES. THE KEY OUTSTANDING ISSUE IS THE QUESTION OF THE REGIME OF CIVIL OVERFLIGHT, BUT NO PROGRESS WAS MADE ON THAT ISSUE. THE INDONESIANS ARE, HOWEVER, CONCERNED THAT THEY REACH SOME UNDERSTANDING WITH THE US IN ORDER THAT THE ARCHIPELAGOES CHAPTER OF THE CONSOLIDATED TEXT INCORPORATE SOME OF THEIR DESIRED CHANGES. THE US TOOK THE VIEW THAT THE ARCHIPELAGO ARTICLES ARE A PACKAGE AND THAT WE WILL SUPPORT AGREED CHANGES TO BE INCORPORATED IN THAT TEXT IF THAT WRAPS UP THE ARCHIPELAGIC NEGOTIATIONS.

B. THE 9 STATES (US, USSR, UK, DENMARK, JAPAN, NORWAY, CANADA, ICELAND AND IRELAND) PRIMARILY CONCERNED WITH SALMON MET TO DISCUSS SOVIET PROPOSED AMENDMENTS TO THAT ARTICLE WHICH WOULD APPEAR TO INCREASE BOTH US AND SOVIET SALMON RIGHTS, BUT IN EFFECT CUT BACK ON FISHING FOR SALMON BY JAPAN PRIMARILY OFF THE USSR, THEREBY INCREASING JAPANESE POLITICAL PRESSURE ON US FOR MORE ACCESS TO SALMON AND ENDAGER THE SALMON ARTICLE AS A WHOLE. IT WAS GENERALLY AGREED BY THE STATES CONCERNED, LESS THE SOVIET UNION, THAT THE RSNT REPRESENTS A FAIR BALANCE.'

4. COMMITTEE II

A. THERE WAS LITTLE ACTIVITY IN THE COMMITTEE OR ITS WORKING GROUPS EXCEPT FOR SOME PRIVATE DISCUSSIONS ON COASTAL STATES RIGHTS TO ESTABLISH REGULATIONS IN THE TERRITORIAL SEA FOR VESSEL SOURCE POLLUTION. A NUMBER OF KEY COUNTRIES INCLUDING THE US WERE READY TO AGREE TO ACCEPT RESTRUCTIONS ON DESIGN, CONTRUCTION, MANNING , AND EQUIPMENT REGULATIONS ON THE UNDERSTANDING THAT THERE WOULD BE NO RESTRICTIONS ON DISCHARGE REGULATIONS, CIVIL LIABILITY AND COMPENSATION REQUIREMENTS, ETC, AND THAT THE RIGHT TO FULLY REGULATE VESSELS ENTERING PORT WOULD BE MAINTAINED. HOWEVER, CONFIDENTIAL

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CANADA HAS NOT BEEN WILLING TO ACCPET THE RESTRUCTIONS,
THUS RAISING DOUBTS ABOUT THE UK AND USSR ON THE OTHER SIDE,
BOTH OF WHICH SAID THEY WOULD GO ALONG IF ALL AGREED.

B. AUSTRALIA MET WITH A GROUP OF MODERATE COASTAL
STATES TO DISCUSS SCIENTIFIC RESEARCH. WHILE THERE WAS REASONABLE
SUPPORT FOR A TACIT CONSENT SYSTEM AND THE APPLICATION OF DISPUTE
SETTLEMENT PROCEDURES, THERE WAS LITTLE WILLINGNESS TO LIG-
BERALIZE THE CONSENT REGIME IN THE RSNT. THE US CONTINUES
TO DISCUSS THIS ISSUE WITH KEY DELEGATIONS.

5. DISPUTE SETTLEMENT - DESPITE STRONG CRITICISM BY
THE GROUP OF 77, IT CAN BE EXPECTED THAT THE MILITARY EX-
CEPTION FAVORED BY THE US WILL REMAIN IN THE TEXT, THE ISSUE
STILL IN DOUBT BEING THE EXACT WORDING OF THE EXCEPTION RELA-
TING TO COASTAL ENFORCEMENT ACTIVITIES. ANY BROAD
EXCEPTION ON LAW ENFORCEMENT WOULD UNDERCUT OUR
INTEREST IN PROTECTING NAVIGATION AND OTHER ACTIVITIES FROM
COASTAL STATE HARRASSMENT.

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